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HIGH COURT OF DELHI : NEW DELHI

Date of decision: 16th August, 2007

W.P (C) No. 4730/2007

Commissioner, Kendriya Vidyalaya Sangathan
.....Petitioner

Through: Mr. S. Rajappa, Advocate.

versus

Pramod Saxena
Respondent

.....

Through: Mr. Gautam Anil Kumar,
Advocate

CORAM:

HON'BLE MR. JUSTICE A.K.SIKRI

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

A.K.SIKRI, J (Oral)

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Rule D.B.

The respondent herein was earlier working as Post Graduate Teacher in Chemistry with Kendriya Vidyalaya Sangathan, the petitioner herein. With effect from 22nd June, 2000, she joined

duties as Principal at Kendriya Vidyalaya, Bharatpur. However, on 19.12.2000 she was reverted to the feeder post, i.e., PGT Chemistry, allegedly on the ground that her performance as a Principal in Kendriya Vidyalaya, Bharatpur was not found to be satisfactory. This action of the petitioner was challenged by the respondent before the Tribunal by filing OA No. 2704/2000. This OA was initially dismissed by the Tribunal on the ground that she did not approach the Tribunal with clean hands. However, in the Writ Petition filed by the respondent against the order of the Tribunal, the said order was set aside and the Tribunal was directed to consider the same on merit. Tribunal has, thereafter, rendered its judgment dated 1.9.2006 allowing the application of the respondent and quashing the reversion orders dated 19.12.2000 with direction that respondent be reinstated as Principal. The operative portion of the judgment of the Tribunal is as under :-

“12. On perusal of judgments cited particularly of V.P. Verma (supra), we are of the considered view that in view of law noticed therein, we have no hesitation to conclude that impugned order has been passed arbitrarily and punitively without complying the principles of natural justice. Order on the face of it, is stigmatic and invocation of para – 4 of 'offer of appointment' in the given circumstances, cannot be upheld. We do not find justification in contention raised by respondents that since

one-year period, for which applicant had been

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appointed on 06.06.2000, has already expired, matter has become academic in nature. As said impugned order has been held to be illegal, arbitrary, unjust and violative of principles of natural justice besides being punitive, we are of the view that applicant has to be reinstated forthwith and she be allowed to serve for remaining tenure. If her performance is found to be satisfactory, her continuation etc. would have to be regulated in terms of directions issued by Hon'ble Calcutta High Court in Ram Singh & Narender Prakash Saxena (supra).

13. In view of the discussion made hereinabove, O.A. is allowed and order dated 19.12.2000 is quashed & set aside. Applicant should be re-instated forthwith. No cost".

Petitioner has challenged the aforesaid order in the said

petition.

On the very first date, i.e., 3rd July, 2007 when this Writ

Petition came up for hearing following order was passed :-

"03.07.2007.

Present: Mr.S.Rajappa for the petitioner.
Mr.Anil Gautam for respondent.

CM 8846/2007

Exemption allowed subject to all just exceptions.

WP(C) No.4730/2007 & CM 8845/2007

Issue notice to the respondent to show cause as to why rule nisi be not issued.

We have heard learned counsel for the

petitioner who has very fairly submitted that reports of the Education Officer dated 19th September, 2000 and 27th September, 2000 which were made the basis of reversion and curtailment of deputation of the respondent as Principal while passing the impugned order, were based on inspections carried out on 18th and 19th September, 2000. The case has had a checkered history inasmuch as the Tribunal had initially dismissed the OA filed by respondent inter alia on the ground of suppression of material facts etc. The order of the Tribunal was set aside by the High Court in WP(C) 6789/2001 and the case was remanded to the Tribunal for hearing on merits. The Tribunal heard the matter on merits and passed the impugned order by which the order of reversion was set aside. Counsel for the petitioner submits that even if the two reports were to be considered together, there would be material to justify the impugned order of reversion. Mr. Anil Gautam, counsel for respondent happens to be present in court. He submits that respondent has already suffered a lot as her peers had got promotion and confirmed as Principals for long. He submits that reports of the Education Officer were inconsistent and self contradictory besides the respondent had hardly assumed charge for three months and the deficiencies sought to be pointed out in the reports are such that could not be attributed to the Principal or remedied by the Principal.

We have considered the above aspect and during the course of submissions, a suggestion has been mooted to resolve this issue where the counsel for respondent submits that respondent would not claim any back wages, subject to respondent being given the requisite seniority from the date the junior

next below to her, was confirmed as Principal. Mr.Rajappa states that respondent case would also have to be cleared for selection by the Selection Committee and he would like to obtain instructions in the matter. Renotify on 17th July, 2007.

Respondent to be present in person on the next date of hearing.

Copy of the order be given Dasti to counsel for petitioner."

Respondent appeared on the next date and made a statement to the effect that she does not insist for payment of back-wages, in case the suggestion mooted on the previous date of hearing is accepted by the petitioner.

However, Mr. S. Rajappa, Advocate states that he has not been able to take instructions from the petitioner as was required vide order dated 3rd July, 2007.

We have accordingly heard the matter on merits with the consent of counsel for the parties.

The Tribunal has held that the order of reversion dated 19.12.2000 was punitive and stigmatic. The said finding is justified in view of the language used by the petitioner in the said order. The said order has rightly been held to have been issued in violation of principles of natural justice, and therefore could not have been

sustained.

In view therefore, it is clarified that while posting the respondent as Principal, respondent shall not be given back-wages. However, her seniority shall be maintained on the basis that she was promoted as Principal w.e.f. 22nd June, 2000.

In the facts and circumstances of this case and after going through the judgment passed by the learned Tribunal, we do not find any illegality or impropriety in the impugned judgment to warrant interference. The petitioner shall, accordingly, comply with the directions of the Tribunal by posting the respondent as Principal within 3 weeks from today. The respondent shall, accordingly, not be entitled to any back-wages for the post of Principal. However, she shall be deemed to have been promoted to the post of Principal for all other purposes including her seniority etc. from the date her immediate junior was promoted to that post.

With these directions, the petition stands disposed of.

A.K.SIKRI, J.

VIPIN SANGHI, J.

August 16, 2007
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